

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 27, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Request for Approval of Special Installment Agreement for Payment of
Retroactive Rent under General Lease No. S -5700 to George Y. Tamashiro and
Suzuko Tamashiro, Kealakehe, South Kona, Hawaii, Tax Map Key: 3rd/7-4-20:18
& 20.

LESSEE:

George Y. Tamashiro and Suzuko Tamashiro, 74-5223A Queen Kaahumanu Highway,
Kailua-Kona, HI 96740.

LEGAL REFERENCE:

Board policy of January 28, 2000, Item D-19, as amended.

LOCATION AND AREA:

Portion of Government lands situated at Kealakehe, North Kona, Hawaii, identified by
Tax Map Key: 3rd/7-4-20:18 & 20, consisting of approximately 4.015 acres more or less
as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Industrial, commercial and transportation purposes.

TERM OF LEASE:

55 years, commencing on February 16, 1972 and expiring on February 15, 2027. Last rental reopening was February 16, 2007; next rental reopening is scheduled for February 17, 2017.

ANNUAL RENTAL:

From February 16, 2007 to February 15, 2017: \$160,000.00.

From February 16, 1997 to February 15, 2007: \$34,999.92.

DCCA VERIFICATION:

Applicant is sole proprietorship and, as such, is not required to register with DCCA.

REMARKS:

By letter dated January 23, 2009, the attorney for the Lessee, Joseph Fagundes, III, requested an installment payment plan on behalf of the Lessee to pay off retroactive rent in the amount of \$215,833.41 incurred as a result of the most recent rental reopening under the lease. A copy of Mr. Fagundes' letter is attached as Exhibit B.

The annual lease rent in the ten-year period ending February 15, 2007 was \$34,999.92. In 2006, DLNR hired an appraiser to determine the rent for the ensuing ten-year period, and the annual rent was established at \$230,000 for the first five years of the reopening term and \$262,500 for years six through ten of the term. DLNR notified Lessee of the new rent by letter dated November 14, 2006. Lessee disputed the new rent and Lessee and the State proceeded to arbitration to resolve the dispute.

In the course of the arbitration, a further dispute arose as to whether Lessee had the right to review the State's appraisal report. Lessee commenced a special proceeding in the Third Circuit Court in Kona, and filed a motion to compel disclosure of the appraisal report. Before the hearing on the motion, the State agreed to release the appraisal report to Lessee. By memorandum dated July 15, 2008, the arbitration panel set the new rent at \$160,000 per year.

The terms and conditions of the lease did not specifically require the Lessee to pay disputed rent during the arbitration process. Accordingly, retroactive rent in the amount of \$215,833.41 accrued in the interim. On October 17, 2008 Lessee paid the increase in its performance bond. Additionally, Lessee has paid the new rental amount (\$13,333.33 per month) since December 10, 2008. However, Lessee has not paid the retroactive rent.

Under Lessee's proposal, Lessee would pay \$70,833.41 of the retroactive rent upon the Board's approval of the installment plan. Lessee would pay the balance of \$145,000 over five years at 7% interest per annum with 59 monthly payments of \$2,871.17 and a final payment of \$2,871.18, which would fully amortize the retroactive rent as indicated in the schedule attached as Exhibit C. Additionally, Lessee would continue to make monthly rental payments of \$13,333.33, making the total payment to DLNR each month \$16,204.50 (except for the monthly payment coinciding with the 60th installment payment which would be \$16,204.51).

The interest rate and amortization schedule have been reviewed by Land Division's Fiscal Office for accuracy.

With the exception of retroactive rent, the Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. A notice of default for non-payment of retroactive rent was issued on December 23, 2008. Lessee timely petitioned Land Division for acceptance of an installment plan. The last rental reopening occurred on February 16, 2007; next rental reopening is scheduled for February 16, 2017. There are no existing special installment agreements on the subject lease. There are substantial improvements on the property that will revert State ownership upon termination of the lease.

RECOMMENDATION:

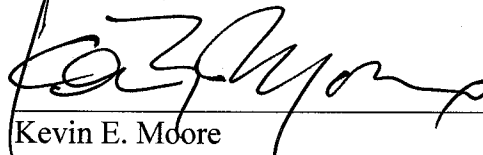
In light of the sizeable down-payment under Lessee's proposal (32.8% of the outstanding retroactive rent amount), the dispute over the release of the State's appraisal report in which the Lessee prevailed after filing its motion, the concomitant delays in establishing the new rent, and the fact that the lease did not require Lessee to pay the disputed rental amount pending the outcome of the arbitration, staff is recommending that the Board accept Lessee's proposal for paying the retroactive rent on an installment basis on the conditions cited above which are by this reference incorporated herein, and further subject to the following terms and conditions:

1. The total amount due is \$215,833.41.
2. Lessee shall pay to DLNR a down payment of \$70,833.41 within thirty (30) days of Board approval of the special installment agreement. Thereafter, commencing on April 1, 2009, Lessee shall make fifty-nine (59) consecutive monthly installment payments of \$2,871.17 and a final payment of \$2,871.18 including interest to DLNR (together with regular monthly rent of \$13,333.33) on or before the first business day of each month.
3. The interest rate applicable to the payments under the installment plan is 7% per annum. Interest will begin accruing as of March 1, 2009.

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4. Prepayments may be made without penalty.
5. Any delinquent installment payment will be charged a \$50.00 late fee plus 1% interest for any month or portion thereof a payment remains unpaid. In addition, a late installment payment shall constitute a breach under the lease. If such breach is not cured within 60 days after delivery to Lessee of a notice of default, the lease shall be subject to forfeiture in accordance with its terms and conditions.
6. Land Division's Fiscal Office shall bill Lessee monthly for installment payments as well as regular monthly rent.

Respectfully Submitted,




Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson







Joseph Fagundes, III

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2009 JAN 26 A 11: 50

January 23, 2009

RECEIVED
LAND DIVISION
HILO, HAWAII

Attn: Morris Atta, Land Division Administrator
Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu, Hawaii 96809

RE: Our Clients, George Y. and Suzuko Tamashiro, Lessee
General Lease No. S-5700

Dear Mr. Atta:

This office represents George and Suzuko Tamashiro and has authorization to submit this proposal to your office.

Pursuant to the completion of the Lease re-opening procedures, a new lease rent was determined and by the invoice dated January 19, 2009, my clients' received a billing for retroactive rent totaling \$215,833.41. The current monthly rent for the premises is \$13,333.33 which payments are up to date.

As the substantial increase of rent under the re-opening process is a significant sum which my client is unable to pay in one lump, Mr. Tamashiro has met with various officials from your department in attempting to craft a payment schedule to satisfy this obligation.

By copy of this letter please accept this proposal for the payment of the retroactive rent reflected on your January 19, 2009, invoice (Document No. gl5700):

Retroactive Rent Total	\$215,833.41
Down Payment (payable immediately)	\$70,833.41
Balance of Retroactive Rent	\$145,000.00

The Tamashiros propose to make payment of the \$145,000 balance in a 60 month fully amortized payment schedule which at 7% interest would result in a monthly payment of \$2,871.18.

Therefore, the proposal we are submitting today would have my clients paying the current lease payment of \$13,333.33 together with the installment payment of the 60 month amortization of \$2,871.18 for a total monthly payment to DLNR of \$16,204.51.

EXHIBIT B

Attn: Morris Atta, Land Division Administrator
Department of Land and Natural Resources
January 23, 2009
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We respectfully request that you present this proposal to the Board for its review and approval. As your records and files in this matter will reflect, that apart from one tardy payment in December of 2008, my clients have always been prompt and current in their lease obligations to the State.

Thank you in advance for your kind review and consideration of this proposal. I look forward to your response. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



JOSEPH FAGUNDIS, III

cc: Clients
Kevin Moore, DLNR Hilo

Amortization Schedule

Loan Date: 3/1/2009
Principal: \$145,000.00
of Payments: 60
Interest Rate: 7.00%
Payment: \$2,871.17 x 59, plus 1 pymt of \$2,871.18

Schedule of Payments

Please allow for slight rounding differences.

Pmt #	Date	Principal	Interest	Balance
1	4/1/2009	2,025.34	845.83	142,974.65
2	5/1/2009	2,037.15	834.01	140,937.50
3	6/1/2009	2,049.03	822.13	138,888.46
4	7/1/2009	2,060.99	810.18	136,827.47
5	8/1/2009	2,073.01	798.16	134,754.46
6	9/1/2009	2,085.10	786.06	132,669.35
7	10/1/2009	2,097.26	773.9	130,572.08
8	11/1/2009	2,109.50	761.67	128,462.58
9	12/1/2009	2,121.80	749.36	126,340.77
10	1/1/2010	2,134.18	736.98	124,206.58
11	2/1/2010	2,146.63	724.53	122,059.95
12	3/1/2010	2,159.15	712.01	119,900.79
13	4/1/2010	2,171.75	699.42	117,729.04
14	5/1/2010	2,184.42	686.75	115,544.62
15	6/1/2010	2,197.16	674.01	113,347.45
16	7/1/2010	2,209.98	661.19	111,137.47
17	8/1/2010	2,222.87	648.3	108,914.60
18	9/1/2010	2,235.83	635.33	106,678.76
19	10/1/2010	2,248.88	622.29	104,429.88
20	11/1/2010	2,261.99	609.17	102,167.88
21	12/1/2010	2,275.19	595.97	99,892.69
22	1/1/2011	2,288.46	582.7	97,604.22
23	2/1/2011	2,301.81	569.35	95,302.41
24	3/1/2011	2,315.24	555.93	92,987.16
25	4/1/2011	2,328.74	542.42	90,658.41
26	5/1/2011	2,342.33	528.84	88,316.08
27	6/1/2011	2,355.99	515.17	85,960.08
28	7/1/2011	2,369.73	501.43	83,590.34
29	8/1/2011	2,383.56	487.61	81,206.78
30	9/1/2011	2,397.46	473.7	78,809.31
31	10/1/2011	2,411.45	459.72	76,397.86
32	11/1/2011	2,425.51	445.65	73,972.34
33	12/1/2011	2,439.66	431.5	71,532.67
34	1/1/2012	2,453.89	417.27	69,078.77
35	2/1/2012	2,468.21	402.95	66,610.56
36	3/1/2012	2,482.61	388.56	64,127.95
37	4/1/2012	2,497.09	374.07	61,630.85
38	5/1/2012	2,511.66	359.51	59,119.19
39	6/1/2012	2,526.31	344.86	56,592.88
40	7/1/2012	2,541.04	330.12	54,051.83
41	8/1/2012	2,555.87	315.3	51,495.96
42	9/1/2012	2,570.78	300.39	48,925.18

EXHIBIT C

43	10/1/2012	2,585.77	285.39	46,339.40
44	11/1/2012	2,600.86	270.31	43,738.54
45	12/1/2012	2,616.03	255.14	41,122.51
46	1/1/2013	2,631.29	239.88	38,491.22
47	2/1/2013	2,646.64	224.53	35,844.58
48	3/1/2013	2,662.08	209.09	33,182.50
49	4/1/2013	2,677.60	193.56	30,504.89
50	5/1/2013	2,693.22	177.94	27,811.66
51	6/1/2013	2,708.93	162.23	25,102.72
52	7/1/2013	2,724.74	146.43	22,377.98
53	8/1/2013	2,740.63	130.53	19,637.34
54	9/1/2013	2,756.62	114.55	16,880.72
55	10/1/2013	2,772.70	98.47	14,108.02
56	11/1/2013	2,788.87	82.29	11,319.14
57	12/1/2013	2,805.14	66.02	8,513.99
58	1/1/2014	2,821.50	49.66	5,692.49
59	2/1/2014	2,837.96	33.2	2,854.52
60	3/1/2014	2,854.53	16.65	0
Totals		145,000.00	27,270.42	